

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ZACHARY GOODMAN, et al.,) No. 2014 C 1022
Plaintiffs,) June 25, 2014
v.) 10:00 a.m.
HANGTIME, INC.,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HON. ELAINE E. BUCKLO

APPEARANCES:

On behalf of Plaintiff: MR. RAFEY S. BALABANIAN
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On behalf of Defendant: MR. LOUIS D. BERNSTEIN
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1 THE CLERK: 14 C 1022, Goodman versus Hangtime, Inc.;
2 motion.

3 MR. BERNSTEIN: Good morning, Judge. Louis Bernstein
4 on behalf of Hangtime.

09:57:52 5 THE COURT: Good morning.

6 MR. BALABANIAN: Good morning, Your Honor. Rafey
7 Balabanian on behalf of plaintiff Zachary Goodman.

8 THE COURT: Good morning.

9 MR. BERNSTEIN: There are two motions up today, Your
10 Honor.

11 THE COURT: Yes. So what's the status on the MDL
12 issue?

13 MR. BERNSTEIN: Your Honor, the motion was filed,
14 appearances are due July 1, responses are due July 8th. It's
15 my understanding that the panel is meeting at the end of July.
16 We are hoping for a decision.

17 THE COURT: How many cases are there?

18 MR. BERNSTEIN: There's four.

19 MR. BALABANIAN: There's two here, one in
20 Massachusetts, and one that was recently filed in San
21 Francisco.

22 THE COURT: And what's your argument going to be that
23 it should be in San Francisco?

24 MR. BERNSTEIN: Your Honor, the lead counsel is in San
25 Francisco, Hangtime is in San Francisco, witnesses are going to

09:58:34

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1 be in San Francisco, the documents, the electronic data is all
2 in San Francisco.

09:58:49

3 MR. BALABANIAN: We, of course, would dispute some of
4 those assertions, but one thing that I am not sure if the Court
5 had a chance to look at our motion to amend.

6 THE COURT: I did.

7 MR. BALABANIAN: The Sims plaintiff is seeking to be
8 added to this case, which would consolidate three of the four
9 cases here in the Northern District of Illinois.

09:59:00

10 THE COURT: I see.

11 MR. BALABANIAN: So, you know.

09:59:16

12 MR. BERNSTEIN: Well, Your Honor, we had spoken about
13 each filing response briefs and reply briefs respective to both
14 motions. We would say, Your Honor, though, we will provide in
15 our response to the motion to amend that the Sims case remains
16 pending; so, therefore, it would be improper for you to
17 obviously add another party to a case when he's still pending
18 in Massachusetts. That case has been, a motion has been filed
19 to dismiss it voluntarily, but they provided that they would
20 not pay costs, and Hangtime's lead counsel has advised he will
21 be seeking costs and attorneys fees in that matter.

09:59:35

22 THE COURT: Why?

09:59:50

23 MR. BERNSTEIN: Because there was no point, Your
24 Honor. They -- this was only filed after the JPM motion was
25 filed. That was filed on the 16th. This motion to amend and

1 add Sims was filed on the 17th.

2 MR. BALABANIAN: Right.

3 MR. BERNSTEIN: So basically, Your Honor, the argument
4 is going to be in the response brief that this motion is being
5 used as a sword in the JPM motion to try to get the three cases
6 here.

7 THE COURT: Well, I mean, the panel that decides MDL
8 cases are very sophisticated. They will do what they want, and
9 this isn't going to make any difference to that. But I think
10 the plaintiff probably has a right to dismiss a case. I
11 wouldn't have any basis for denying a motion to amend at this
12 early stage of the case. I'll grant that, but nothing much is
13 going to happen here in the meantime until really until they
14 decide where the case should be or I mean, well, I take it
15 you're all agreed it is going to be an MDL case?

16 MR. BALABANIAN: Well, we agree for the most part that
17 they should all be consolidated into a single action.

18 Just to give the Court a full picture, this was the
19 first filed case. We didn't coordinate with any other
20 plaintiffs' firms. The Sims plaintiffs filed a couple months
21 after us which often happens. Then someone filed the copycat
22 case, the Salam case that's pending before Judge Dow, that was
23 the third filed. And then the San Francisco was just filed in
24 May, which is again another kind of copycat case.

25 So as far as using this motion to transfer as a sword

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1 for the MDL, I don't understand what that means. What we are
2 trying to do is bring them all into a single court.

3 THE COURT: Well, they may decide it should be out
4 there if that's where everything is located. And they look at
5 other things as well. You know, they'll look at -- well, I
6 don't know what their case loads are out there.

7 MR. BALABANIAN: Right, but I just --

8 THE COURT: I don't think they are huge, but I'm not
9 sure.

10 MR. BALABANIAN: I haven't seen the situation where
11 plaintiff is seeking to dismiss their case to coordinate and
12 make it more efficient and then counsel seeks fees.

13 THE COURT: Well, that, the fee thing isn't here.

14 MR. BERNSTEIN: Right.

15 THE COURT: They can do that.

16 MR. BALABANIAN: That's right, and I am not involved
17 in that.

18 THE COURT: On the basis of what you're saying, so
19 then wait a minute. So this, I mean, this is the plaintiff in
20 that case wishes to do this?

21 MR. BALABANIAN: Yes, wishes to be added to this case.

22 MR. BERNSTEIN: But, Your Honor --

23 THE COURT: That's fine.

24 MR. BERNSTEIN: The thing I would ask, one, for the
25 right to file a brief response to that within 7 or 14 days

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1 because the Sims case remains pending. That will not be
2 resolved for a period of time, so to add Sims to this case now
3 when he remains a plaintiff in the other case doesn't make much
4 sense.

10:02:29

5 THE COURT: Well, he's going to have to dismiss it.

6 MR. BALABANIAN: But it's whether it's going to be
7 assessed costs or fees. But the case isn't going to go away.

8 THE COURT: That's up to the Judge out there.

9 Who is the Judge?

10:02:38

10 MR. BALABANIAN: I'm sorry, Judge. I forgot off the
11 top of my head.

12 THE COURT: That's okay. I'm actually supposed to be
13 starting a trial.

10:02:48

14 MR. BALABANIAN: Defendant isn't disputing dismissal,
15 but they are seeking for costs or fees.

16 THE COURT: Well, they have a right to decide that.
17 That's not up to me.

10:03:00

18 MR. BERNSTEIN: Right. I don't disagree that it will
19 go away. Our point, though, is this can't be added in front of
20 Judge Bucklo until that is resolved and he is no longer a
21 plaintiff in a companion case. He can't be a party in two
22 cases at the same time for the same relief. Once he is
23 dismissed and a court order is entered, then it would be
24 appropriate to file a motion to add him, but not before.

10:03:18

25 THE COURT: All right. I'll give you over the weekend

1 to file something that says that they can't do that. I don't
2 think you can find something that says that.

3 MR. BALABANIAN: Should we reply or no need? I'm
4 happy to file a quick reply if the Court wants that, or
5 otherwise I'm fine.

10:03:36

6 THE COURT: Okay. Sure. I just, frankly, I just
7 can't imagine that that isn't the appropriate thing to do,
8 leaving aside whether there's a cost issue. But it seems to me
9 at this stage of the case before you would dismiss, you would
10 make sure you were in, but you would do it in this order. I
11 mean, that just seems more logical to me.

10:03:58

12 MR. BALABANIAN: Because otherwise he -- right,
13 exactly.

14 THE COURT: But if you file something that says I'm
15 wrong, it wouldn't be the first time I was wrong about
16 something. Then I'll give you a couple days to reply, and I
17 will set a ruling, I'm going to put it on my calendar just
18 because I want to make sure I get it. I'm just going to set a
19 ruling for July 9th, but chances are you won't have to come in.
20 If I find out there really isn't any basis, then I'll deny it,
21 and otherwise I'm going to grant it.

10:04:13

10:04:36

22 As far as a stay, I don't know. They are always
23 sending us things saying and telling us they don't really think
24 we ought to formally stay things. But it's true, sometimes
25 people do.

10:04:56

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1 MR. BERNSTEIN: Right.

2 MR. BALABANIAN: We would object to a stay. We are
3 happy to file a short --

10:05:05

4 THE COURT: Well, that one you'd better, I guess I'd
5 better think about what the parameters are. So at least by the
6 time you reply on whatever he says, file your motion.

7 MR. BALABANIAN: My opposition?

10:05:22

8 THE COURT: Or your opposition, and I'll give you a
9 week to reply, and I'll set a ruling on that for about a week
10 after that. Okay.

11 MR. BALABANIAN: These dates will just come through
12 the minute order, Your Honor?

13 THE COURT: Yes.

10:05:29

14 MR. BERNSTEIN: Your Honor, one last issue. They did
15 file discovery I believe on June 10th. I don't want us to be
16 in default by not responding to the discovery by July 10th.

17 MR. BALABANIAN: Well, they can have an extension,
18 first of all.

19 MR. BERNSTEIN: That's all right.

10:05:40

20 THE COURT: I'll extend that one for 30 days anyway.
21 Okay.

22 MR. BERNSTEIN: Thank you very much.

23 THE COURT: All right, thank you.

24 MR. BERNSTEIN: Appreciate it.

25 (Proceedings concluded.)

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C E R T I F I C A T E

I, Michael P. Snyder, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable ELAINE E. BUCKLO, one of the judges of said Court, at Chicago, Illinois, on June 25, 2014.

/s/ Michael P. Snyder
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

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